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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROSS HACK,
MELISSA HACK, AND
LELAND JONES,

Defendants.

2:12-cr-063-PMP-RJJ

PROPOSED COMPLEX CASE
SCHEDULE PURSUANT
TO LCR 16-1(a)

Pursuant to Local Rule 16-1(a)(1) and (2), counsel for the United States, Daniel G. Bogden United States Attorney, and Assistant United States Attorney, Kathleen Bliss; Thomas E. Perez, Assistant Attorney General – Civil Rights Division, and Patricia A. Sumner, Trial Attorney; and Federal Public Defender, Rene Valladares, as counsel for defendant Ross Hack; E. Brent Bryson and Gabriel L. Grasso, as counsel for defendant Melissa Hack; and James Hartsell, as counsel for defendant Leland Jones, respectfully submit this proposed Complex Case Schedule, requesting that this Court set a trial date and enter an Order “fixing the schedule for discovery and pretrial motions.”(LCR 16-1(a)(1)–(a)(4)).

1 1. The Indictment in this case was returned by a federal Grand Jury seated in Las Vegas,
2 Nevada, on February 28, 2012. (Docket # 1).

3 2. Defendants Melissa Hack and Leland Jones were arraigned and entered pleas of Not
4 Guilty on February 29, 2012. (Docket # 5). Defendant Ross Hack appeared for his arraignment and
5 plea hearing March 9, 2012, and enter his plea of Not Guilty. (Docket # ____). The Court set a trial
6 date of May 8, 2012, and joined the defendants for trial. This Court should find, however, that under
7 the law and circumstances of this case, this case is complex and an appropriate complex case
8 schedule is warranted.

9 3. The case presents complex and novel issues of fact and law in that the Indictment
10 charges the defendants with murdering Lin Shersty and Daniel Newborn on federal land, causing
11 their deaths through the use of a firearm, during and in relation to first degree murder, in violation
12 Title 18, United States Code, Sections 1111, 924(c) and (j). (Docket # 1).

13 4. 18 U.S.C. §§ 1111 and 924j are death penalty eligible offenses. See 18 U.S.C. §
14 3591.¹ Defendants Ross Hack and Melissa Hack are charged with a death penalty eligible offense,
15 so the government must comply with the Department of Justice's "death penalty protocol."² See
16 United States Attorneys' Manual, § 9-10.000 et seq. Leland Jones is not subject to the death penalty
17 because he was a juvenile (17 years old) at the time of the alleged murders. See Roper v. Simmons,
18 543 U.S. 551 (2005) (holding that the Eighth and Fourteenth Amendments forbid imposition of
19 death penalty on offenders who were under age of 18 when their crimes were committed). The death
20 penalty protocol includes a recommendation by the United States Attorney and by the Assistant
21 Attorney General on whether or not to seek the death penalty. Defense counsel has the opportunity
22 to present facts, including mitigating factors, to the United States Attorney and to the Assistant
23 Attorney General for consideration. A Department of Justice review committee then reviews the
24

25 ¹ Defendants are entitled to a second counsel "learned in the law applicable to capital
26 cases " as provided by 18 U.S.C. § 3005.

27 ² The death penalty protocol applies in all federal cases in which a defendant is
28 charged with an offense subject to the death penalty, regardless of whether the United States
Attorney or the Assistant Attorney General intends to request authorization to seek the death
penalty.

1 United States Attorney's and Assistant Attorney General's recommendation and provides defense
 2 counsel the opportunity to present mitigating evidence. The review committee then makes its own
 3 recommendation to the Attorney General who makes the final decision about whether the death
 4 penalty will be sought by the government.

5 5. Counsel for defendants Ross Hack and Melissa Hack need appropriate time to
 6 prepare for their presentation to the United States Attorney and to the Assistant Attorney General.

7 6. The time needed to complete the Department of Justice's "death penalty protocol"
 8 is properly excluded under the Speedy Trial Act. See United States v. Murillo, 288 F.3d 1126 (9th
 9 Cir. 2002) (holding that the Department of Justice's death penalty protocol is a "valid reason to grant
 10 an ends of justice continuance" under 18 U.S.C. § 3161 (h)(8)(A)); United States v. Mathis, 96 F.3d
 11 1577, 1581 (11th Cir. 1996) (same).

12 **PROPOSED COMPLEX CASE SCHEDULE**

13 7. On or by May 1, 2012, the government will provide discovery in this case that
 14 involves production of evidence under Fed. R. Crim. P. 16; that is, materials within the
 15 government's possession that were obtained from the state relative to the investigation and
 16 prosecution of John Butler, the criminal history reports for each defendant, and statements made by
 17 each defendant. The government will not provide the statements of defendants collectively, but each
 18 defendant will receive only his or her statement and no others. The government will not produce
 19 the statements of any witness or concomitant impeachment evidence (Giglio) obtained by the
 20 government in the course of the federal investigation.

21 **PROPOSED COMPLEX CASE SCHEDULE**

22 1. Considering the schedule, below, the parties request a trial date no earlier than
 23 November 1, 2013.

24 2. The Initial Discovery Phase.

25 The parties propose that the government shall continue to meet its obligation to disclose and
 26 provide the following:

- 27 a. all statements, documents, and objects, including audio and video recordings,
 28 required to be disclosed under Federal Criminal Rules of Procedure 16(a)(1)(A)-

1 (F).

2 b. all search warrants, orders authorizing the interception of wire, oral or electronic
3 communications, and supporting affidavits, that relate to evidence that may be
4 offered at trial.

5 c. all officers reports, forensic evidence reports and any information required under
6 Kyles v. Whitely, 514 U.S. 419 (1995), with the exception of witness
7 statements as defined at 18 U.S.C. § 3500 and any impeachment
8 information relative to that witness.

9 3. The Discovery Motions Schedule To Resolve Any Discovery Disputes.

10 The parties acknowledge a duty to make good faith efforts to meet and confer with each other
11 to resolve informally any dispute over the scope, manner and method of disclosures before seeking
12 relief from the Court. A breach of the duty to meet and confer, by either party, may serve as a basis
13 to grant or deny any subsequent motion for appropriate relief made before the Court. If the parties
14 are unable to agree or resolve disputes after good faith efforts to do so, the parties propose the
15 following discovery pretrial motions schedule:

16 a. Preauthorization Motions, that is, all motions related to the Death Penalty
17 Protocol, shall be filed on or by September 1, 2012.

18 b. Responses to Preauthorization Motions shall be filed on or by September 30,
19 2010.

20 c. Replies to Preauthorization Responses shall be filed on or by October 15, 2012.

21 d. Defendants shall submit to the United States Attorney and to the Assistant
22 Attorney General their Memoranda relative to Preauthorization on or by January
23 30, 2013.

24 e. The United States Attorney and the Assistant Attorney General shall meet with
25 counsel for defendants regarding Preauthorization on or by February 28, 2013.

26 f. The United States Attorney and the Assistant Attorney General shall submit their
27 recommendations concerning death penalty eligibility to the United States
28 Department of Justice on or by April 2, 2013.

- 1 g. Pretrial Motions, that is, all motions related to Trial in this case, including
2 notices of any defenses under Rules 12.1, and 12.2 of the Federal Rules of
3 Criminal Procedure, shall be filed on or before August 1, 2013. Disclosure of
4 expert witnesses that the parties intend on calling in their respective cases in
5 chief shall also be due on this date of August 1, 2013.
- 6 b. Responses to Pretrial Motions to be filed on or before August 15, 2013; and
7 c. Replies to Pretrial Motions to be filed on or before August 21, 2013.

8 4. The Second Discovery Phase

9 The parties propose that NO LATER THAN 30 DAYS BEFORE TRIAL:

10 Defendants will comply with his obligation to provide reciprocal discovery and
11 provide all documents, objects and reports of examination required under Federal
12 Rule of Criminal Procedure 16(b)(1)(A) and (B). NO LATER THAN 30 DAYS
13 BEFORE TRIAL.

14 5. The Third Discovery Phase

15 The parties propose that NO LATER THAN 14 DAYS BEFORE TRIAL:

- 16 a. the parties will disclose any summaries, charts or calculations that will be offered
17 in their respective case-in-chief at trial;
- 18 b. the parties will identify recordings, transcripts of recordings, or portions thereof,
19 that will be offered in their respective case-in-chief at trial.
- 20 c. the government will provide any evidence of similar acts, as provided by Fed. R.
21 Crim. P. 404(b), that it intends on introducing at trial.
- 22 d. the government will provide to defendant the statements of each witness that the
23 government intends on calling in its case-in-chief, including any impeachment
24 (Giglio) information, unless the government files a motion for a protective order.

25 6. Supplemental Motions.

26 The parties agree that any supplemental motion can be filed upon a showing of good cause
27 as determined by the Court. These motions shall be based on issues unforeseen to the parties at the
28 time this agreement was filed.

1 WHEREFORE, the government respectfully request that the Court grant this Motion and
2 enter an Order: adopting the proposed complex case schedule. A proposed Order is attached for the
3 convenience of the Court.

4 Dated this the __ day of March 2012.

5 THOMAS E. PEREZ
Assistant Attorney General–Civil Rights Division

DANIEL G. BOGDEN
United States Attorney

6 By:_____/s/_____
7 PATRICIA A. SUMNER
Trial Attorney

By:_____/s/_____
KATHLEEN BLISS
Assistant United States Attorney

8
9 By:_____/s/_____
10 RENE VALLADARES
Counsel Defendant Ross Hack

By:_____/s/_____
Learned Counsel for Defendant Ross Hack

11
12 By:_____/s/_____
13 E. BRENT BRYSON
Counsel Defendant Melissa Hack

By:_____/s/_____
Learned Counsel for Defendant Melissa Hack

14
15 By:_____/s/_____
16 JAMES HARTSELL
Counsel Defendant Leland Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

12-CR-0063-PMP-RJJ

Plaintiff,

vs.

**ORDER FOR COMPLEX CASE
SCHEDULE PURSUANT
TO LCR 16-1(a)**

ROSS HACK,
MELISSA HACK, AND
LELAND JONES,

Defendants.

1. The Indictment in this case was returned by a federal Grand Jury seated in Las Vegas, Nevada, on February 28, 2012. (Docket # 1).

2. Defendants Melissa Hack and Leland Jones were arraigned and entered pleas of Not Guilty on February 29, 2012. (Docket # 5). Defendant Ross Hack appeared for his arraignment and plea hearing March 9, 2012, and enter his plea of Not Guilty. (Docket # ____). The Court set a trial date of May 8, 2012, and joined the defendants for trial. This Court should find, however, that under the law and circumstances of this case, this case is complex and an appropriate complex case schedule is warranted.

3. The case presents complex and novel issues of fact and law in that the Indictment charges the defendants with murdering Lin Shersty and Daniel Newborn on federal land, and causing their deaths through the use of a firearm, during and in relation to first degree murder, in violation Title 18, United States Code, Sections 1111, 924(c) and (j). (Docket # 1).

4. 18 U.S.C. §§ 1111 and 924(j) are death penalty eligible offenses. See 18 U.S.C. § 3591.³ Defendants Ross Hack and Melissa Hack are charged with a death penalty eligible offense,

³ Defendants are entitled to a second counsel “learned in the law applicable to capital cases” as provided by 18 U.S.C. § 3005.

so the government must comply with the Department of Justice's "death penalty protocol."⁴ See United States Attorneys' Manual, § 9-10.000 et seq. Leland Jones is not subject to a penalty of death because he was a juvenile (17 years old) at the time of the alleged murders. See Roper v. Simmons, 543 U.S. 551 (2005) (holding that the Eighth and Fourteenth Amendments forbid imposition of death penalty on offenders who were under age of 18 when their crimes were committed). The death penalty protocol includes a recommendation by the United States Attorney and by the Assistant Attorney General on whether or not to seek the death penalty. Defense counsel has the opportunity to present facts, including mitigating factors, to the United States Attorney and the Assistant Attorney General for consideration. A Department of Justice review committee then reviews the United States Attorney's recommendation and provides defense counsel the opportunity to present mitigating evidence. The review committee then makes its own recommendation to the Attorney General who makes the final decision about whether the death penalty will be sought by the government.

5. Counsel for defendants Ross Hack and Melissa Hack need appropriate time to prepare for their presentation to the United States Attorney and to the Assistant Attorney General.

6. The time needed to complete the Department of Justice's "death penalty protocol" is properly excluded under the Speedy Trial Act. See United States v. Murillo, 288 F.3d 1126 (9th Cir. 2002) (holding that the Department of Justice's death penalty protocol is a "valid reason to grant an ends of justice continuance" under 18 U.S.C. § 3161 (h)(8)(A)); United States v. Mathis, 96 F.3d 1577, 1581 (11th Cir. 1996) (same).

Based on the above facts and foregoing motion, IT IS THEREFORE ORDERED:

1. The Trial Date(s):

1. Trial is set on November 5, 2013.

2. The Initial Discovery Phase.

The government shall produce the following on or by May 1, 2012:

⁴ The death penalty protocol applies in all federal cases in which a defendant is charged with an offense subject to the death penalty, regardless of whether the United States Attorney or the Assistant Attorney General intends to request authorization to seek the death penalty.

- a. all statements, documents, and objects, including audio and video recordings, required to be disclosed under Federal Criminal Rules of Procedure 16(a)(1)(A)-(F).
- b. all search warrants, orders authorizing the interception of wire, oral or electronic communications, and supporting affidavits, that relate to evidence that may be offered at trial.
- c. all officers reports, forensic evidence reports and any information required under Kyles v. Whitely, 514 U.S. 419 (1995), with the exception of witness statements as defined at 18 U.S.C. § 3500 and any impeachment information relative to that witness.

3. The Discovery Motions Schedule To Resolve Any Discovery Disputes.

The parties shall make good faith efforts to meet and confer with each other to resolve informally any dispute over the scope, manner and method of disclosures before seeking relief from the Court. A breach of the duty to meet and confer, by either party, may serve as a basis to grant or deny any subsequent motion for appropriate relief made before the Court. If the parties are unable to agree or resolve disputes after good faith efforts to do so, the parties propose the following discovery pretrial motions schedule:

- a. Preauthorization Motions, that is, all motions related to the Death Penalty Protocol, shall be filed on or by September 1, 2012.
- b. Responses to Preauthorization Motions shall be filed on or by September 30, 2010.
- c. Replies to Preauthorization Responses shall be filed on or by October 15, 2012.
- d. Defendants shall submit to the United States Attorney and to the Assistant Attorney General their Memoranda relative to Preauthorization on or by January 30, 2013.
- e. The United States Attorney and the Assistant Attorney General shall meet with counsel for defendants regarding Preauthorization on or by February 28, 2013.
- f. The United States Attorney and the Assistant Attorney General shall submit their

recommendations concerning death penalty eligibility to the United States Department of Justice on or by April 2, 2013.

g. Pretrial Motions, that is, all motions related to Trial in this case, including notices of any defenses under Rules 12.1, and 12.2 of the Federal Rules of Criminal Procedure, shall be filed on or before August 1, 2013. Disclosure of expert witnesses that the parties intend on calling in their respective cases in chief shall also be due on this date of August 1, 2013.

b. Responses to Pretrial Motions to be filed on or before August 15, 2013; and

c. Replies to Pretrial Motions to be filed on or before August 21, 2013.

4. The Second Discovery Phase

NO LATER THAN 30 DAYS BEFORE TRIAL:

Defendants will comply with his obligation to provide reciprocal discovery and provide all documents, objects and reports of examination required under Federal Rule of Criminal Procedure 16(b)(1)(A) and (B). NO LATER THAN 30 DAYS BEFORE TRIAL.

5. The Third Discovery Phase

NO LATER THAN 14 DAYS BEFORE TRIAL:

a. the parties will disclose any summaries, charts or calculations that will be offered in their respective case-in-chief at trial;

b. the parties will identify recordings, transcripts of recordings, or portions thereof, that will be offered in their respective case-in-chief at trial.

c. the government will provide any evidence of similar acts, as provided by Fed. R. Crim. P. 404(b), that it intends on introducing at trial.

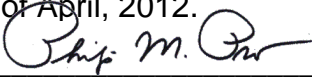
d. the government will provide to defendant the statements of each witness that the government intends on calling in its case-in-chief, including any impeachment (Giglio) information, unless the government files a motion for a protective order.

6. Supplemental Motions.

Any supplemental motion can be filed upon a showing of good cause as determined by the

1 Court. These motions shall be based on issued unforeseen to the parties at the time this agreement
2 was filed.

3
4 Dated this the . 16th day of April, 2012.

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6 _____
7 The Honorable Philip M. Pro
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